

**STATE OF NEW MEXICO
BEFORE THE SECRETARY OF ENVIRONMENT**

**IN THE MATTER OF THE APPLICATION
OF C&E CONCRETE INC.
FOR AN AIR QUALITY PERMIT,
NSR PERMIT NO. 9027, GAMERCO HMA**

No. AQB 21-29(P)

HEARING OFFICER'S REPORT

I. INTRODUCTION

C&E Concrete, Inc submitted an air quality permit application to construct a 200 ton per hour hot mix asphalt plant which will be co-located with an existing concrete batch plant at 208 Crystal Avenue, Gamerco, NM 87317, approximately 2.66 miles north of the intersection of I-40 and Highway 491 in McKinley County, NM. C&E Concrete, Inc. owns and operates the facility.

C&E Concrete, Inc. filed the air quality construction permit application for the plant on November 6, 2020, and it was deemed complete on December 4, 2020. The NM Environment Department's Air Quality Bureau ("AQB") has reviewed the application, including emission rates and concluded that operation of the plant will comply with applicable requirements and not cause or contribute to an exceedance of federal and state ambient air quality standards if conducted in accordance with the Department's draft permit conditions.

Pursuant to 20.2.72.206.A.4 and B NMAC, the AQB received public comment on the permit application. The AQB received 5 public comments and 1 petition against the plant with 40 signatures, and no requests for a public hearing regarding Air Quality Permit No. 9027 for C&E Concrete. In response, Liz Bisbey-Kuehn, Air Quality Bureau Chief, filed a Memorandum on February 25, 2021, recommending a finding of "significant public interest," and a public hearing determination. Secretary James C. Kenney concurred on April 12, 2021 and appointed the undersigned Hearing Officer on June 10, 2021.

The matter was heard on September 27, 2021, by Gregory Ara Chakalian, Office of Public Facilitation's Administrative Law Judge and appointed Hearing Officer, virtually on the Zoom platform with simultaneous language interpretation in Navajo and Spanish languages. NMED's Office of General Counsel represented the AQB through Christopher J. Vigil. Called as witnesses for AQB were Eric Peters, Air dispersion Modeler, and Todd Sherrill, Permit Specialist in the Minor Source Unit. The AQB submitted six exhibits which were all received into evidence during the public hearing.

C&E was represented by Louis Rose and Kari Olson of Montgomery and Andrews, P.A. Called as witness for C&E was Paul Wade, Senior Project Manager of Montrose Air Quality Services, LLC,

General (non-technical) public comment was provided verbally by Patricia Sheely who opposed the application. Ms. Sheely also submitted a written comment to the same effect, to wit the plant will be close to residences, produce an odor, and it is a low-income community with mainly Navajo and Hispanic residents. Mr. Bill Bright submitted a written comment in favor of approval with added conditions, to wit:

“Public comments for Asphalt Plant application in Gamerco, NM: I noted the large % of SO₂. Sulfur is smelly & the engineer glossed over the prevailing winds slide. We know that wind blows in all directions here. There should be added 'conditions': 1) C&E will be monitored for odors & fined, 2) C&E will be required to pay for added cost of Gamerco road paving from added truck traffic, 3) C&E will agree to independent environmental monitoring with fines, 4) C&E will install carbon capture technology on any & all carbon based heating systems used, 5) C&E will submit plans for the health & safety of all of it's employees, 6) C&E will set aside a certain amount of funds for community grants.”

The virtual public hearing took place over the course of a single day, and was conducted in accordance with 20.1.4 NMAC, NMED's Permitting rule. The hearing was recorded in its entirety by WebEx. The Permitting rule does not require verbatim transcription.

The record proper includes, *inter alia*, the application for air quality permit (“Application”); the public hearing determination memo; notice of docketing; notices of public hearing in English and Spanish; notices of intent to present technical testimony from C&E and the AQB; the administrative record submitted by the AQB, with supplementation; notices of filing and affidavits of publication; written public comment and other documents and exhibits submitted at the hearing; post-hearing submittals from C&E and the AQB; and this Report and Recommended Decision.

An independent summary of the testimony is not set out here; C&E and the AQB submitted excellent summaries of the testimony as part of their proposed findings and conclusions, which are adopted below.

II. APPLICABLE LAW

New Mexico Air Quality Control Act, NMSA 1978, §§ 74-2-1 to 74-2-17

New Mexico Air Quality Regulations - Construction Permits, 20.2.72 NMAC

New Mexico Environment Department Permitting Procedures – 20.1.4 NMAC

III. RECOMMENDATION

Based upon the administrative record in its entirety, including the post-hearing submittals, I recommend that the proposed final draft permit be approved, as set forth in the Administrative Record with the modified conditions stipulated below. What follows is drawn from C&E and the AQB proposed findings of fact and conclusions of law, based on the evidence.

IV. FINDINGS OF FACT

1. On October 26, 2020, C&E submitted an air quality permit application to the Bureau for the Gamerco HMA Facility (“Facility”), a 200 tons per hour / 500,000 tons per year hot mix asphalt plant. C&E Ex. 2; Statement of Basis, Bureau Ex. 5.
2. The Facility includes storage piles, feed bins, conveyors, screens, a pug mill, baghouses, mixers, silos, an asphalt heater, tanks, haul road and yard emissions. Statement of Basis; Audio Tr. at 01:11:10 (Sept. 27, 2021).
3. The Facility has proposed to limit its hourly processing rate to 200 tons per hour of hot mix asphalt and the host asphalt heater will be permitted to run continuously at a rate of 8,760 hours per year. Statement of Basis; Audio Tr. at 13:37 (Sept. 27, 2021).
4. For purposes of Prevention of Significant Deterioration (“PSD”) applicability, the Facility is a minor source. Statement of Basis.
5. The Bureau provided notice of its preliminary determination for an Air Quality Permit for C&E in November 2020. Public Notice for Air Quality Construction Permit, November 19, 2020, available at <https://www.env.nm.gov/wp-content/uploads/sites/2/2020/11/AQBP-Legal-Notice.pdf>.
6. On December 4, 2020, the Bureau determined the air permit application was administratively complete. C&E Ex. 2.
7. The Notice of Preliminary Determination was published in The Gallup Independent on December 8, 2020. **[RP 2329]**.
8. Based on the comments received, the Bureau determined that the air permit application had “significant interest” justifying a public hearing to be held. Bureau February 25, 2021, Memorandum, Concurred with Secretary Kenney.

9. The Secretary extended the amount of time for the Bureau to issue a final decision on the application on June 2, 2021. Joint Motion for Waiver of Deadline to Issue Decision.

10. A Hearing Officer was appointed, and a hearing date was set for September 27, 2021. Scheduling Order; Notice of Hearing and Appointment of Hearing Officer.

11. Legal notice of the public hearing was published in both English and Spanish in The Gallup Independent on August 25, 2021, and The Albuquerque Journal on August 23, 2021. **[RP 2332, 2336]**.

12. On September 13, 2021, C&E filed a Statement of Intent to Provide Technical Testimony listing one witness, Paul Wade. C&E Statement of Intent.

13. The Bureau also submitted a Statement of Intent to Provide Technical Testimony on September 13, 2021 and listed two witnesses: Todd Sherrill and Eric Peters. Bureau Statement of Intent.

14. A hearing was held on this matter on Monday, September 27, 2021, via the ZOOM web conferencing platform, beginning at 4:00 PM and continuing until approximately 6:15 PM. The Department provided language for Navajo and Spanish speaking members of the public on separate ZOOM channels. Audio Tr. of Proceedings (Sept. 27, 2021).

15. C&E's witness adopted his pre-filed written testimony and provided a summary of the same, explaining why C&E was entitled to a permit for the Facility. Audio Tr. at 37:15 (Sept. 27, 2021).

16. Both C&E and the Bureau agreed to the following permit conditions:

- a. Condition A110A: "Requirement: All combustion emissions units shall combust only Burner Fuel Oil, Natural Gas or Propane. The sulfur content of the fuel shall not exceed 0.5% sulfur by weight. Use of

pipeline quality natural gas or commercial propane shows compliance with a sulfur by weight of 0.5%. Recordkeeping: The permittee shall demonstrate compliance with the burner fuel oil limit on total sulfur content by maintaining records, of a current, valid purchase contract, tariff sheet or transportation contract for the gaseous or liquid fuel, or fuel gas analysis, specifying the allowable limit or less.”

- b. Condition A112A: “Requirement: Compliance with the SO₂ limits in Table 106.A shall be demonstrated by the asphalt heater combusting only pipeline quality natural gas fuel, commercial propane, or diesel fuel with a sulfur content of the fuel shall not exceed 0.05% sulfur by weight and by compliance with Condition A401.B. Use of pipeline quality natural gas or commercial propane shows compliance with sulfur by weight of 0.05%. Recordkeeping: The permittee shall demonstrate compliance with the diesel fuel sulfur content by maintaining records, receipts, or invoices from a commercial fuel supplier that demonstrate the facility combusts diesel fuel with a sulfur content that does not exceed 0.05% sulfur by weight.”
- c. Condition A112A: “Requirement: Compliance with the particulate matter emission limits in Table 106.A for facility wide haul roads shall be demonstrated by limiting the number of round-trip paved road trips to 286 trucks/day. The round-trip trucks/hour limits on the paved road were specified in the permit application and are the basis for the Department’s

modeling analysis to determine compliance with the applicable ambient air quality standards.”

- d. Condition A403D(3): “Requirement: Compliance with allowable particulate emission limits in Table 106.A shall be demonstrated by:
1. Material Handling Equipment Units 3, 4, 5, 6, 7, 8, 9, 14, 15, and 16 shall have a Wet Dust Suppression System installed to minimize fugitive emissions to the atmosphere from emission points and to meet the emission limitations contained in this permit.
 2. At any time, if visible emissions at material transfer points are observed, additional water sprays shall be added or if already installed, turned on, to minimize the visible emissions.
 3. Each Wet Dust Suppression System shall be turned on and properly functioning at all times the facility is operating, unless rain or snow precipitation achieves an equivalent level of dust control. Any problems with the control devices shall be corrected before commencement of operation. Recordkeeping: A daily record shall be made of the Wet Dust Suppression System inspection and any maintenance activity that resulted from the inspection. The permittee shall record in accordance with Section B109 of this permit and shall also include a description of any malfunction and any corrective actions taken. The record shall be formatted with a description of what shall be inspected

to ensure the inspector understands the inspection responsibilities. If the Wet Dust Suppression System is turned off due to rain or snow precipitation that achieve the equivalent level control as the Water Spray Units, it shall be so noted in the daily record.”

Audio Tr. at 49:31; 01:36:29 (Sept. 27, 2021).

17. The Bureau’s witness, Todd Sherrill, adopted his pre-filed written direct testimony and provided a summary thereafter. Audio Tr. at 1:01:44 (Sept. 27, 2021).

18. Mr. Sherrill described the proposed facility as represented in the permit application and associated updates as complying with all state and federal air quality regulations. Audio Tr. at 01:13:43 (Sept. 27, 2021).

19. The Bureau presented additional conditions to include in the permit. C&E did not oppose the conditions. NMED Ex. 6; Audio Tr. at 1:15:23 (Sept. 27, 2021).

20. The Bureau recommended issuance of the air permit with conditions. Audio Tr. at 01:16:04 (Sept. 27, 2021).

21. The Bureau then presented its second witness, Eric Peters who adopted his pre-filed written direct testimony and provided a summary thereafter. Mr. Peters explained that the modeling demonstrated that federal and state ambient air quality standards would be met, based on the representations in the permit application. Audio Tr. at 01:16:39 (Sept. 27, 2021).

22. Following the direct testimony, the Bureau witnesses responded to questions from the hearing officer and one member of the public. Audio Tr. at 01:23:03 (Sept. 27, 2021).

23. The Bureau called an additional witness Ms. Rhonda Romero, the Minor Source Section Manager to testify on the four conditions questioned by C&E Witness Mr. Wade. Audio Tr. at 01:36:12 (Sept. 27, 2021).

24. A General Construction Permit is required in New Mexico for all facilities with a potential emission rate either greater than 10 pounds per hour or 25 tons per year for pollutants with a national or state ambient air quality standard. NMED Ex. 1.

25. The proposed permit used EPA's AP-42 Compilation of Air Emission Factors, Volume 1 to calculate the potential to emit for the facility. NMED Ex. 1; C&E Ex. 2.

26. Air quality dispersion modeling was also completed for the Facility. The modeling was conducted in accordance with American Meteorological Society/Environmental Protection Agency Regulatory Model Improvement Committee Dispersion Model ("AERMOD"), which is the EPA recommended model for determining Class II impacts within 50 kilometers of the source being assessed. C&E Ex. 2.

27. C&E's air modeling protocol was submitted to the Bureau on September 22, 2020 and approved by the Bureau's modeling section prior to beginning the analysis on October 5, 2020. C&E Ex. 2.

28. C&E's modeling was performed in accordance with the New Mexico Modeling Guidelines. NMED Ex. 3.; Audio Tr. at 01:21:56 (Sept. 27, 2021).

29. The Facility, if operated in accordance with proposed air permit, will meet all applicable state and federal air quality regulations. Audio Tr. at 55:14 (Sept. 27, 2021).

30. Based on modeling results and potential-to-emit calculations, if the facility operates in compliance with the terms and conditions of the draft permit, it will not cause or contribute to any concentrations above state or federal ambient air quality standards or PSD

increments. NMED Ex. 2; NMED Ex. 3; C&E Ex.2; Audio Tr. at 55:27, 01:22:12 (Sept. 27, 2021).

V. CONCLUSIONS OF LAW

31. The hearing was conducted in accordance with the Department's permitting procedures found at 20.1.4 NMAC, and all persons present were given adequate opportunity to present views, comments, and evidence.

32. All public notice requirements of 20.2.72 and 20.1.4 NMAC were met for this hearing.

33. The Bureau has the authority to issue construction permits, such as the proposed permit pursuant to 20.2.72.220 NMAC.

34. The Bureau adequately considered and responded to written comments submitted during the comment period for this permit.

35. C & E has the burden of establishing its entitlement for a permit for the Facility.

36. C&E has met its burden of proof and demonstrated that the Facility will meet the applicable requirements of the Air Quality Control Act and Air Quality Control Regulations and will not cause or contribute to air contaminant concentrations in excess of applicable state and federal ambient air quality standards.

37. The Bureau has the burden to establish that its proposed conditions are necessary and appropriate to assure that the Facility meets the requirements of the Air Quality Control Act and Air Quality Control Regulations.

38. The Bureau has met its burden of proof.

39. The Bureau met all statutory and regulatory requirements with regard to public outreach and public notice of the hearing in this matter.

40. No technical evidence was offered during the hearing to support denial or further conditions on the permit.

RECOMMENDED FINAL ORDER

A draft Final Order consistent with the recommendations above is attached and incorporated by reference.

Respectfully submitted,

Gregory
Chakalian

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Chakalian
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GREGORY ARA CHAKALIAN,
Administrative Law Judge,
Office of Public Facilitation

Certificate of Service

I hereby certify that on October 28, 2021, A copy of the Hearing Officer's Report was sent via electronic mail to the persons listed below. A hard copy will be mailed upon request.

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